

Editor's note: Reconsideration granted; decision vacated -- See Ida Lee Anderson (On Reconsideration) 73 IBLA 223 (May 31, 1983)

IDA LEE ANDERSON

IBLA 82-1041

Decided February 8, 1983

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting in part oil and gas lease offer M 47590.

Affirmed.

1. Oil and Gas Leases: Applications: Descriptions

Where only a portion of a protracted section is available for oil and gas leasing, an over-the-counter oil and gas lease offer must describe all available lands by subdivisional parts. If this is not feasible, as in the case of an irregular section, the entire section must be described, and the offer must contain a statement that all available lands in the section are desired. An offer describing a protracted section by subdivisional parts is properly rejected where the section, containing 639 acres, is irregular.

APPEARANCES: Ida Lee Anderson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On June 23, 1980, Ida Lee Anderson filed over-the-counter oil and gas lease offer M 47590 for various lands in Montana. By decision dated June 14, 1982, the Montana State Office, Bureau of Land Management (BLM), rejected in part offer M 47590. 1/ That part of the decision for which Anderson seeks review stated: "Regulations 43 CFR 3101.1-4(d) requires that an offer to lease lands on a protracted survey of an irregular section must describe the entire section and contain a statement that it shall be deemed to include

1/ BLM rejected certain lands in the offer because they were embraced in a lease offer which had priority in time of filing. Anderson did not appeal that part of BLM's decision.

all of the land in the described section which is available for lease." (Emphasis in original.) The lands affected were described by BLM as sec. 31 E 1/2, E 1/2 SW 1/4, SW 1/4 SW 1/4, E 1/2 NW 1/4 SW 1/4, T. 25 N., R. 17 W., Principal meridian, Montana.

On appeal, Anderson states that a portion of sec. 31 is included in patented lands in which the United States retained no mineral interest; that her offer covered all the lands available for leasing in the section (except those patented lands according to BLM's plat); that the section is a protracted section; that the regulation, 43 CFR 3101.1-4(d), states that where only a portion of a protracted section is available for lease, the offer must describe all the available lands by subdivisional parts; and that the exception relates to irregular sections.

Appellant argues that sec. 31 is not an irregular section. She continues:

The Code of Federal Regulations does not contain the definition of irregular section. However, the BLM is obviously assuming that all sections lying along the north and west edges of each township are irregular sections. As Section 31 does not appear to be misshapen, nor does it lie along the edge of a lake, river or other irregular natural object that would tend to cut off part of its shape, Appellant contends that it is mere conjecture on the part of the BLM to assume that Section 31 is an irregular section.

Statement of Reasons at 3.

[1] Anderson is correct in stating that the regulations do not define "irregular section." It is generally accepted, however, that a section contains 640 acres. ^{2/} See 43 U.S.C. § 751 (1976). The oil and gas plat for T. 25 N., R. 17 W., indicates that sec. 31 contains 639 acres. Any section containing more or less than 640 acres must be considered an irregular section. In the present case the irregularity is a 1-acre variance in a protracted section.

The applicable regulation, 43 CFR 3101.1-4(d)(2), states that an offer may include less than an entire protracted section where only a portion of that section is available for lease. In such a case, the regulation requires a description of all the available lands by subdivisional parts. That is what Anderson did in this case. Sec. 31 contains patented homestead lands. The remainder of the section was described by Anderson by subdivisional parts totaling 460 acres.

The exception to this method of describing a protracted section is set forth in the following sentence in the same regulation, 43 CFR 3101.1-4(d)(2),

^{2/} In BLM's Glossary of Public Land Terms (1949 ed.) at 47, "section" is defined as "[t]he major subdivision of a township; normally a quadrangle approximately one mile square containing approximately 640 acres and identified by number, e.g., sec. 36 (Section 36)." (Emphasis in original.)

which states: "If this is not feasible, as, e.g., in the case of an irregular section, the offer must describe the entire section and contain a statement that it shall be deemed to include all of the land in the described section which is available for lease" (Emphasis added.) This is the part of the regulation applied by BLM in rejecting the acreage in question. Since the oil and gas plat clearly shows that sec. 31 is less than 640 acres, BLM correctly applied the exception in 43 CFR 3101.1-4(d)(2).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision, as it related to lands in sec. 31, is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

